

NON-PARTICIPATING UTILITY (CONSTRUCTION)

DERRY - LONDONDERRY  
IM-0931(201)  
13065  
(I-93; Exit 4A and Connecting Roadway)  
(UTILITY WORK)

UTILITY AGREEMENT

This Agreement is made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Design-Builder, a Corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and authorized to do business in the State of New Hampshire, party of the first part, hereinafter called the “Design-Builder”, and \_\_\_\_\_ (Vendor # \_\_\_\_\_), a Corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the “\*”.[\[FOR AGREEMENT WITH COMPANY\]](#)

This Agreement is made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Design-Builder, a Corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and authorized to do business in the State of New Hampshire, party of the first part, hereinafter called the “Design-Builder”, and \_\_\_\_\_ (Vendor # \_\_\_\_\_), a municipally owned utility/municipality, party of the second part, hereinafter called the “\*”.[\[FOR AGREEMENT WITH MUNICIPALITY\]](#)

WITNESSETH:

WHEREAS, the New Hampshire Department of Transportation, hereinafter called the “State”, has the approval of the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), for a Federal-Aid Project (Organization Code 3054), Derry – Londonderry, IM-0931(201), 13065, for the preliminary and final design, right-of-way acquisition, and construction of EXIT 4A on I-93 and connecting roadway, in the Towns of Derry and Londonderry, County of Rockingham, New Hampshire, which construction necessitates the {installation/relocation/replacement} of Description of Facility to the extent required to permit construction of the Project, and,

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the “Commissioner”, is having the Design-Builder prepare plans and specifications for such Project marked Derry – Londonderry, IM-0931(201), 13065, which plans and specifications meet with the approval of the \* and will be on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, said \_\_\_\_\_ facility(ies) is/are located on \_\_\_\_\_ (a State or Municipally maintained roadway), and therefore the costs of the relocations are the responsibility of the Utility, and,[\[FOR PUBLIC UTILITY FACILITIES ON STATE OR MUNICIPALLY MAINTAINED ROADWAY\]](#)

WHEREAS, said \_\_\_\_\_ facility(ies) is/are located on \_\_\_\_\_ (a State maintained roadway), and therefore the costs of the relocations are the responsibility of the Town, and, [FOR MUNICIPAL FACILITIES ON STATE MAINTAINED ROADWAY]

WHEREAS, the \* desires the \_\_\_\_\_ to be included as part of the Highway Contract, and, [WORK INCLUDED IN STATE CONTRACT]

WHEREAS, the \* desires the assistance of the Design-Builder in the {installation/relocation/replacement} of the aforementioned facilities, [IDENTIFIES RELATIONSHIP FOR WORK TO BE ACCOMPLISHED]

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. [INSERT DESCRIPTION OF WORK AND BEGIN PARAGRAPH #'S.]

# The Design-Builder shall furnish the labor, equipment, and materials to perform design engineering and construction services for the non-participating \_\_\_\_\_ relocations at the following approximate locations:

# The \* shall furnish the labor, equipment, and materials to perform design engineering and construction services for the non-participating \_\_\_\_\_ relocations at the following approximate locations:

#. The Design-Builder shall furnish the labor, equipment, and materials to perform construction of the non-participating \_\_\_\_\_ relocations at the following approximate locations:

#. The \* shall furnish the labor, equipment, and materials to perform construction of the non-participating \_\_\_\_\_ relocations at the following approximate locations:

**Method of Payment for Described Work:**

Work will be paid for at {Actual Cost estimated at{ and not to exceed}/Lump Sum cost of/Fixed Cost estimate at/Actual Contractor's Bid estimate at [for an already bid upon project]} \$xxxxx.xx (Work Class Code 2250 Non-Par) as shown below and in the attached estimate:

Estimated Non-Participating Contract Items	<b>\$xxx,xxx.xx</b>
Estimated Total Actual Cost due Design-Builder by *	<b>\$xxx,xxx.xx</b>

- #. The work described in Paragraph(s) \_\_ above is shown in greater detail on the approved plans and in the attached plans and estimates being made a part of this Agreement.[\[WORK HIGHLIGHTED ON PLANS\]](#)
- #. The work described in Paragraph(s) \_\_ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same. The \* agrees to reimburse the Design-Builder for the design engineering, construction engineering and inspection services incurred in the \_\_\_\_\_. The \* agrees to accept the operation, use, and maintenance of the facilities, as constructed.
- #. The work described in Paragraph(s) \_\_\_ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same. The \* agrees to reimburse the Design-Builder for the actual construction costs, and also agrees to accept the operation, use, and maintenance of the facilities, as constructed.
- #. The \* agrees to permit the State, its agents, and contractors to enter upon said premises, easement and land of the \* for the purpose of performing the work described in Paragraph(s) \_\_\_ above.[\[ALLOWS ACCESS TO UTILITY'S PROPERTY\]](#)
- #. In order to assure a proper installation, the \* {shall/will} assist the State in the inspection of the Contractor's work described in Paragraph(s) \_\_ as required by the Project. Any issue shall be brought to the attention of the State's Contract Administrator immediately and he/she shall resolve it. The Contract Administrator will require the Design-Builder to take corrective action as necessary to provide an acceptable installation, relocation, and/or adjustment.[\[INSPECTION BY UTILITY\]](#)
- #. The work described in Paragraph(s) \_\_\_ above, will be done by \* forces and/or \*'s Contractor.[\[UTILITY PERFORMED WORK\]](#)
- #. The \* agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's completion date, provided the \* is not delayed by acts of God, strikes, or late delivery of critical materials.
- #. The \* agrees to perform the work hereinbefore proposed, in accordance with the plans mentioned above, including such additions or modifications hereafter approved, in

writing, by the \*, Design-Builder and the State.[STATEMENT OF PRIOR APPROVAL OF WORK]

- #. In accordance with the **BUY AMERICA** requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410), all manufacturing processes for steel and iron products furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.[INCLUDE THIS PARAGRAPH AND A – D BELOW ON A FEDERALLY FUNDED PROJECT WHERE UTILITY PERFORMS WORK]
- A. Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.
  - B. A Certificate of Compliance (available at [www.NHDOT.com](http://www.NHDOT.com)) shall be furnished for steel and iron products as part of the backup information with the billing. Records to be maintained by the \* for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or non-payment of the work.
  - C. The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.
  - D. Upon completion of the project, the \* shall certify in writing as to compliance with this Section and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the work covered by this Agreement. The form for this certification entitled “Buy America Certificate of Compliance” can be found at [www.NHDOT.com](http://www.NHDOT.com).



- #. The State agrees to reimburse the \* the amount of \$\_\_\_\_\_ for trench and backfill. The State also agrees to reimburse the \* for the book value (original cost less allowable depreciation) of the \_\_\_\_\_ which will be retired, the amount of \$\_\_\_\_\_. Said payment(s) {are/is} computed per the attached estimate. The \* agrees that these amounts fulfill the State’s obligation of RSA 228:22 (trench, backfill, and book value). [PAYMENT IN ACCORDANCE WITH RSA 228:22]
  
- #. All cost records of the \* pertaining to the Project will be subject at any time to inspection and audit by representatives of the State and the Federal Government for a period of not less than three (3) years from the date final payment is received by the \*. [REQUIREMENT TO MAINTAIN RECORDS FOR FUTURE AUDITS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DESIGN-BUILDER

COMPANY/MUNICIPALITY

X

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_ {checker’s initials}

\_\_\_\_\_  
(Date)